

# Report for Congress

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## **Homeland Security Office: Issues and Options**

**May 20, 2002**

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Report Documentation Page				Form Approved OMB No. 0704-0188	
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1. REPORT DATE <b>20 MAY 2002</b>		2. REPORT TYPE <b>N/A</b>		3. DATES COVERED <b>-</b>	
4. TITLE AND SUBTITLE <b>Homeland Security Office: Issues and Options</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Congressional Research Service The Library of Congress 101 Independence Ave. SE Washington, DC 20540</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release, distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>SAR</b>	18. NUMBER OF PAGES <b>29</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

# Homeland Security Office: Issues and Options

## Summary

President George W. Bush created the Office of Homeland Security (OHS) within the Executive Office of the President after the September 11, 2001, terrorist attacks as a federal focal point for coordinating domestic efforts against terrorism. Former Governor Tom Ridge of Pennsylvania, a close friend and political ally of the President, was appointed to head the OHS. Such a high-level unit, it was hoped, could bring direction and coherence to federal homeland security-related activities that were spread among more than 40 different departments and agencies. Yet OHS has been controversial almost since its inception. Despite some high-profile results such as highlighting priorities in the President's FY2003 budget and negotiating a border security accord with Canada, OHS remains very much an organizational work in progress—one seeking to carve out a unique identity and mission. Critics have focused on the Office's informal structure and special relationship with the White House, its lack of statutory authority, the essentially domestic focus of its activities, its alleged duplication of coordination mechanisms already in place, and its inability to exert direct control over federal programs and budgets. Proposals have been introduced in Congress, in the Administration and in various think tanks for reorganizing OHS, reshaping its mandate, or replacing it with an entirely new federal agency. Whether the Office will continue to exist in its present form is by no means assured; ultimately, its future character may well be influenced less by its ability to coordinate the federal terrorism response than by its ability to create a new dialogue on anti-terrorism coordination between federal authorities and their state and local counterparts.

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# Homeland Security Office: Issues and Options

## Introduction

On October 8, 2001, 28 days after the catastrophic attacks on the World Trade Center and the Pentagon, President Bush issued Executive Order 13228 establishing the Office of Homeland Security (OHS) and the Homeland Security Council (HSC), chaired by the President.<sup>1</sup> The OHS's preeminent mission as defined in the order is to develop a comprehensive national strategy to safeguard the United States against terrorism. The White House has made clear that this strategy should extend from federal agency coordination into the full range of homeland security activities across federal, state and local jurisdictions. The Office's designated functions are to "coordinate the Executive Branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States," and also to "work with" states and localities as well as private industry in accomplishing these tasks. The simultaneously-created Homeland Security Council was described as an interagency "mechanism" for coordinating and implementing homeland security policies at the federal level.

A subsequent presidential directive (Homeland Security Presidential Directive-1, hereafter HSPD-1) established a cabinet-level principals' committee chaired by the OHS Director (formally titled the Assistant to the President for Homeland Security). The principals' committee sits atop a hierarchy modeled on the National Security Council system—a subcabinet deputies' committee, and 11 policy coordination committees (PCCs), each chaired by a senior director of OHS. The latter entities, listed in Figure I, were defined as the "main day-to-day fora for interagency coordination of homeland security policy." (See table 1.)<sup>2</sup> The PCCs also are enjoined to coordinate federal policy on homeland security with state and local

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<sup>1</sup> The White House, "Establishing the Office of Homeland Security." Executive Order 13228. *Federal Register*, vol. 66, no. 196. October 8, 2001, pp. 51812-51816. HSC members included the President, the Vice-President, the Secretaries of the Treasury, the Department of Defense, Health and Human Services, and Transportation, the Attorney General, the directors of the Central Intelligence Agency, the Federal Bureau of Investigation, and the Federal Emergency Management Agency, the Assistant to the President for Homeland Security and "such other officers of the executive branch as the President may from time to time designate." For other CRS products on OHS/HSC, see CRS Report RL31148, *Homeland Security: The Presidential Coordination Office*, by Harold C. Relyea; and, *Office of Homeland Security*, in CRS Terrorism Briefing Book.

<sup>2</sup> The White House, "Organization and Operation of the Homeland Security Council." Homeland Security Presidential Directive 1. As cited in Lee M. Zeichner, *Critical Infrastructure Assurance*. LegalNetWorks, Inc. February 24, 2002, p. 27.

governments, although HSPD-1 offers little guidance on how this is to be accomplished.

**Table 1. Policy Coordination Committees**

Committee	Senior Director
Detection, Surveillance, and Intelligence	Intelligence and Detection (Ken Piernick)
Law Enforcement and Investigation	Intelligence and Detection (Ken Piernick)
Plans, Training, and Evaluation	Policy and Plans (Richard Falkenrath)
Weapons of Mass Destruction Consequence Management	Response and Recovery (Michael Byrne)
Economic Consequences	Response and Recovery (Michael Byrne)
Domestic Threat Response and Incident Management	Response and Recovery (Michael Byrne) or Intelligence and Detection (Ken Piernick)
Key Asset, Border, Territorial Waters, and Airspace Security	Protection and Prevention (Bruce Lawlor)
Domestic Transportation Security	Protection and Prevention (Bruce Lawlor)
Medical and Public Health Preparedness	Protection and Prevention (Bruce Lawlor)
Research and Development	Research and Development (Penrose Albright)
Public Affairs	Communications (Susan Neely)

**Source:** OHS Organization Chart.

The perceived need, basic blueprint and core justification for the new office had emerged some time before the September 11 events. Various congressionally-mandated panels and legislative initiatives had called attention to the growing terrorist threat to the U.S. homeland. For example, the United States Commission on National Security/21st Century (the Hart-Rudman Commission) predicted in January 2001: “The combination of unconventional weapons proliferation with the persistence of international terrorism will end the relative invulnerability of the U.S. homeland to catastrophic attack. A direct attack on American citizens on American soil is likely over the next quarter century.”<sup>3</sup> A widely-shared view was that the United States lacked an overarching strategic framework that could guide policy-

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<sup>3</sup> United States Commission on National Security/21st Century. *Road Map for National Security: Imperative for Change*. Phase III Report Washington, D.C. January 31, 2001. p viii.

making and resource allocation for counterterrorism efforts. For example, the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (the Gilmore Commission) asserted in December 2000 that “the United States has no coherent functional national strategy for combating terrorism.” The U.S. General Accounting Office (GAO) in September 2001 stressed the need to “review and clarify the structures for overall leadership and coordination of federal programs to combat terrorism.”<sup>4</sup> The studies advanced various proposals for reconfiguring the federal government’s decision-making processes vis a vis the terrorist threat. The OHS-HSC framework reflected and incorporated the reformist thrust of these proposals, at least with respect to domestic security policy. As if to underscore the distinctive character of OHS in the policy process, the terms “coordinate” and “coordination” or variants of them were repeated no less than 34 times in Executive Order 13228.

The OHS-HSC structure, though, seemed to be both more and less than what advocates of reorganization had hoped. Some had envisioned a more powerful organization—a homeland security agency—with direct-line administrative authority to secure the nation’s borders and improve domestic preparedness. Others questioned whether OHS could lead and oversee the vast range of homeland security activities—reportedly spread across more than 40 federal agencies and an estimated 2,000 separate congressional appropriations accounts.<sup>5</sup> Also controversial was the scope of OHS responsibilities. Its mandate appeared to reach inward to coordinate “across a broad spectrum of federal, state, and local agencies,” but various proponents of reorganization favored reaching outward as well, so as to integrate foreign and domestic counterterrorism into a single strategic plan.<sup>6</sup> Still other observers saw OHS as adding little to planning and coordination mechanisms that already existed within the federal government (including those mandated by Congress).

These various concerns carry a number of implications for the definition and organization of OHS functions. They can be grouped into four major issue areas. These areas are expected to receive careful consideration by Congress and the Administration in the months ahead.

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<sup>4</sup> Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. *Toward a National Strategy for Combating Terrorism*. Arlington, VA, RAND, December 2002. GAO, *Combating Terrorism: Selected Challenges and Related Recommendations*. GAO-01.S22. Washington, D.C. September 2001. p. 7. Priorities in the war on terrorism could change dramatically, given the evolving nature of the threat, thereby requiring a corresponding redefinition of the role of the OHS. Different strands of thought on OHS’s present organizational mandate and its possible future will be discussed in this report.

<sup>5</sup> Author interview, OHS. Washington, D.C. March 5, 2002 (hereafter March OHS interview); Speech by OHS official to Monterey Institute of International Studies. Washington, D.C. April 10, 2002.

<sup>6</sup> *Toward a National Strategy for Combating Terrorism*., p. 4.

- Does OHS have adequate organizational resources and authority to coordinate the homeland security activities of the federal bureaucracy?
- How is “national security” understood? What is OHS’s nexus to it? Are OHS’s mission and responsibilities conceived broadly enough to guide national policy-making on combating terrorism?
- What “value-added” does OHS generate in coordinating homeland security and in what areas might OHS make a unique contribution?
- What alternative models or organizational refinements for managing the war on terrorism might be considered and what advantages or disadvantages do they offer?

## Organizational Resources and Authority

### Organization and Staffing

Concerns over the effectiveness, authority and performance of OHS and its director, Governor Tom Ridge, are widespread in Congress as insistent demands for Ridge’s testimony in public hearings attest. Yet evaluation is difficult because OHS is very much an organization in flux. As of March-April 2002, only 90 of a projected 180 full-time personnel slots had been filled. Most were detailees from other agencies rather than direct hires. Some of the 11 aforementioned policy coordination committees had not yet convened; others were in the process of formation.<sup>7</sup> Also noteworthy is the prevalence of dual allegiance; for instance, the Senior Directors for Intelligence and Detection and for R&D report to superiors in, respectively, the NSC and the Office of Science and Technology Policy as well as in OHS.<sup>7</sup> Partly because of staffing problems, the centerpiece of the OHS mission statement, a comprehensive national strategy for homeland security, has not yet materialized. It is not projected for completion until June 2002, nine months after the September 11 tragedy. (At that time, the document would be sent to the President; when it would be disseminated to the public is not clear.) OHS and the Administration have produced a budget calling for \$37.7 billion in homeland security spending in FY 2003, but as its architects admit, the budget did not attempt to address “the totality of the homeland security agenda” and did not equate to a national strategy. Rather, it focused on disparate policy initiatives—such as bioterrorism and border security— that “were deemed so imperative and urgent that they required immediate attention.”<sup>8</sup>

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<sup>7</sup> March OHS interview.

<sup>8</sup> President George W. Bush, “Securing the Homeland, Strengthening the Nation.” Washington, D.C. February 2002, p. 8. For discussion see Larry Nowels. *Homeland Security FY2003 and FY2002 Supplemental Budget Requests CRS Terrorism Briefing Book* May 2, 2002, pp. 1-4.



The fact that OHS is not yet fully staffed and operational might account for its reluctance to be responsive, especially vis a vis the legislative branch. Its FY2003 budget is not an integrated budget item, unlike other Executive Office of the President (EOP) entities (such as the NSC, the Office of Science and Technology Policy, and the “Drug Czar’s” office). Rather, OHS is aggregated with funding for other White House functions such as physical and information technology security in the EOP and compensation of the President and the White House office.<sup>9</sup> Gaining appointments with OHS officials has been difficult for congressional staff. Recent testimony by the Comptroller General of the United States notes, “I must say that we have experienced some access problems in connection with our OHS-related efforts.” (The reference here is to the General Accounting Office’s response to a congressional request to conduct audits and reviews in the area of homeland security.)<sup>10</sup> Also significant in the eyes of Congress is OHS Director Tom Ridge’s refusal to testify before congressional committees about public spending on homeland protection. The White House has invoked the separation of powers doctrine as a reason and also has “contended that The President, rather than Congress, oversees a presidential adviser who is not confirmed by the Senate.” Also, White House aides do not regularly testify before Congress, although they have done so some 20 times since 1944, according to a recent analysis.<sup>11</sup> Nevertheless, given OHS’s relatively high profile, the Administration’s position has been challenged by Congress. Senator Robert Byrd, chairman of the Senate Appropriations Committee, and Senator Ted Stevens, the ranking Republican member of the committee have asked for Ridge’s testimony. Byrd sees Ridge as having a unique responsibility to “integrate the many complex functions of the various federal agencies” involved in formulating homeland security policy.<sup>12</sup> In a 1,300-word letter to Ridge in April 2002, Senator Byrd wrote,

The decisions which you make as Director of the Office of Homeland Security undoubtedly will play a large role in thousands of funding decisions in the coming years. ... There is simply no rational reason for avoiding the committee which has to review and recommend expenditures from the U.S. Treasury to the full Senate and the American people.<sup>13</sup>

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<sup>9</sup> A press service reports the FY2002 budget for OHS as \$25 million. See Brigitte Blair and Gail Kaufman, “New Office Must Define Role, Threats to Homeland.” *Federal Times*. October 29, 2001, p. 1.

<sup>10</sup> David M. Walker. *Homeland Security: Responsibility and Accountability for Achieving National Goals*. U.S. General Accounting Office: GAO-02-G27T. Washington, D.C. April 11, 2002. p. 3.

<sup>11</sup> CRS Report RL31351, *Presidential Advisees’ Testimony before Congress: A Brief Overview*, by Harold Relyea and Jay R. Shampansky.

<sup>12</sup> Jules Witcover, “Bush Asks for Trouble by Snubbing Senators.” *The Baltimore Sun*. March 6, 2002 [<http://www.sunspot.net>].

<sup>13</sup> Scott Laidlaw, “Sen. Byrd Rejects Ridge Offer on Briefing.” *The Philadelphia Inquirer*. April 5, 2002, p. A4. In a hearing on April 30, Senator Byrd posed the question: “Why can this administration not unbend its arrogant position that it took in the very beginning when Senator Stevens and I asked Mr. Ridge to appear?” See Federal News Service “Homeland Security Spending” Panel One of a Hearing of the Senate Appropriations Committee. April 30, 2002 p. 2.

A related question is whether OHS, in its present organizational makeup, can muster the necessary personnel and clout to reconcile the “complex” functions of agencies involved in homeland protection. To many observers, the current staff size of 90 seems small relative to the Herculean task of determining how funds currently are being spent in a multitude of agencies and setting new homeland security requirements and priorities: others argue that size need not correlate with effectiveness. An additional concern is the large percentage of detailees on the OHS staff. By comparison, only about one-fifth of the approximately 145 employees of the Office of National Drug Control Policy, often seen as an organizational counterpart for the OHS, were assigned from other agencies. The danger may exist that these assignees, who are paid by and responsible to their parent organizations, would pull for their organizations’ own priorities, funding, and programs, possibly compromising OHS’s leadership and oversight functions in coordinating federal agency activities. It can be argued that OHS will need to both create more staff slots and increase the relative weight of staff employees in the organizational mix.

## Authority

OHS’s formal authority over programs and budgets, established by executive order rather than by statute, is relatively circumscribed. The order states that the Director shall “review and provide advice to the heads of departments and agencies” for homeland security-related programs; advise the Office of Management and Budget (OMB) on the “level of funding” for such programs; and, before OMB forwards the prepared annual budget to the president for transmittal to Congress, certify to OMB funding levels deemed “necessary for homeland security-related and appropriate activities of the executive branch.” The order established no criteria or set of procedures for not certifying an agency’s homeland security budget. Also, the wording of the order implies that certification occurs late in the budget cycle — after OMB has vetted agencies’ budget submissions and passed them back in interim or final form — suggesting that this step may be little more than a formality.

A comparison can be drawn with the budgetary authority of the Office of National Drug Control Policy (ONDCP), an EOP entity often mentioned as a possible model for coordination of federal anti-terrorist activities. ONDCP’s authority is based in statute (112 Statute, Sec. 704) and is fairly explicit.<sup>14</sup> ONDCP, for instance, can transfer funds between agencies, subject to the approval of the head of each affected agency, and must approve any requests for reprogramming of funds of more than \$5 million. A key difference with OHS lies in the review and certification of agencies’ drug control budgets. ONDCP immerses itself in the process early on, reviewing agencies’ total budget requests in early summer and issuing so-called “precertification letters” specifying changes that should be made. Final certification or decertification decisions are made in the fall. In the event of decertification, the affected department or agency is required to include the funding levels recommended by ONDCP in the budget request that it submits to OMB. Also, the ONDCP Director must notify Congress of the decision and the supporting reasons for it.

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<sup>14</sup> P.L. 105-277. October 21, 1998 (112 Stat. 2681) Title VII. Office of National Drug Control Policy Reauthorization. For discussion, see GAO, *Drug Control: ONDCP Efforts to Manage the National Drug Control Budget*. GAO/GGD-99-80. May 1999, pp. 1-13.

The significance of the decertification tool, though, has been questioned, since real budgetary power resides with OMB and the President and ultimately with Congress. There has been only a single recorded case of decertification. This suggests that bureaucratic and political pressures on ONDCP and the respective agencies to reach accommodation in the “precertification” phase are considerable. The sole case involved a 1997 dispute between ONDCP and the Department of Defense (DOD) over funding levels for certain drug program initiatives. Specifically, ONDCP wanted an increase of \$141 million in DOD’s drug budget, which DOD resisted as an encroachment on its war-fighting functions. ONDCP appealed to OMB and the president, and the result was a negotiated compromise in which DOD agreed to spend an additional \$73 million on drug-related activities in FY1999.<sup>15</sup>

A divergence of opinion exists on whether OHS, like ONDCP, should have a statutory foundation and whether its Director should be subject to confirmation by the Senate. Proponents see a statute and a confirmation procedure as conferring legitimacy on the Office and strengthening its role in the budget process. Also, increased congressional oversight is considered by some as desirable in its own right, given the significance of OHS’s duties. Others interviewed for this report, including OHS staffers, are skeptical of the need for a statute, citing informal levers of power as the key to performance of the Office’s functions.<sup>16</sup> According to the latter viewpoint, the biggest lever is OHS Director Ridge’s proximity to the President, which confers extraordinary influence. As Ridge noted in a speech to the National Press Club in February, “Some of my friends in Congress think it’s very important for this office to be a legislative office. ... I’ve been in town four months now and I’ve had at least \$38 billion worth of budget authority in four months; that’s not so bad.”<sup>17</sup>

On the other hand, presidential access might not transfer so easily from the incumbent director to a successor, a possible argument for institutionalizing OHS through legislation. Furthermore, Ridge’s authority in Washington may be gradually undermined, unless protected by legislation. A number of commentators argue that Ridge is losing out in various turf disputes with the Justice Department, the Pentagon, and other agencies of the government.<sup>18</sup> A recent Brookings Institution

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<sup>15</sup> Bradley Graham, “Drug Control Chief Won’t Let Pentagon Just Say No.” *The Washington Post*. November 24, 1997; GAO, *Drug Control*, p. 2.

<sup>16</sup> Author interview, OHS. January 8, 2002; OHS March interview.

<sup>17</sup> “National Press Club Luncheon Remarks by Tom Ridge, Director of Homeland Security.” Federal News Service. February 7, 2002.

<sup>18</sup> Oft-cited examples are the Pentagon’s failure to consult with Ridge’s office on a plan, announced in March 2002 to suspend around-the-clock flight patrols in New York City; the evident defeat of Ridges’s December 2001 border security initiative; and the Attorney General’s assumption of lead authority to issue terrorist threat warnings. See “Big Visions for Security Post Shrink Amid Political Drama,” *New York Times*, May 3, 2002. p. A1 and Adriel Bettelheim “Turf Wars Take Toll on Ridge” *CQ Weekly* April 27, 2002 pp. 1071-1073

study concludes that “statutory authority may be the best, if not the only, way for Ridge to gain the stature he needs to get the job done.”<sup>19</sup>

## **Mission and Responsibilities for Guiding National Security Policy Related to Terrorism**

### **Scope**

No formal government-wide definition of homeland security has emerged since the creation of the OHS-HSC structure.<sup>20</sup> Nevertheless, generalizations can be made about what OHS planning and coordination responsibilities do and do not cover.

First, OHS’s purview mostly excludes nonterrorist threats to the security of Americans at home. For instance, OHS is not involved in coordinating drug interdiction efforts, defending against ballistic missiles, or managing the consequences of natural disasters. Furthermore, as Defense Secretary Donald Rumsfeld has pointed out in testimony, OHS also will not exercise oversight authority vis a vis DOD’s new Northern Command for homeland defense or over its military missions “to defend the people and territory of the United States,” such as combat air patrols, maritime defense, or even cases of terrorist threats of attacks.<sup>21</sup>

Second, while OHS is assigned a major role in protection of “critical infrastructure”—telecommunications, energy, transportation links, and the like—its role in cybersecurity is limited. Executive Order 13231 of October 10, 2001, established a “Critical Infrastructure Protection Board” (CIPB) which is to “recommend policies and coordinate programs for protecting information systems for critical infrastructure.” Seemingly this meant that OHS would oversee protection for physical assets while the Board would be responsible for their information components.<sup>22</sup>

Third, OHS’s focus is on terrorist threats on the territory of the United States. OHS’s prevention function, for example, is defined narrowly in terms of border control rather than broadly in terms of international initiatives against terrorism. As one observer has remarked, the Bush Administration’s initial response to terrorism

<sup>19</sup> Michael E. O’Hanlon, et al., *Protecting the American Homeland: A Preliminary analysis*. Washington, D.C.

<sup>20</sup> The Office of Management and Budget, though, has its own definition of “combating terrorism,” which includes the following four elements: law enforcement and investigation activities; preparing for and responding to terrorist acts; physical security of government facilities and employees and physical protection of national populace and infrastructure; and research and development. See George W. Bush, “Securing the Homeland, Strengthening the Nation.” February 2002, p. 27. Brookings Institution Press, 2002. p. 116.

<sup>21</sup> Statement in *Hearing on Homeland Security in the FY2002 Supplemental*. Federal News Service. May 7, 2002. pp. 5-6.

<sup>22</sup> The White House, “Critical Infrastructure Protection in the Information Age.” Executive Order 11321. *Federal Register*, vol. 66, no. 202. October 16, 2001, pp. 53063-53071.

“seems based on a mission of homeland security seen largely through the prism of civil defense.”<sup>23</sup> However, this leaves unresolved the important and potentially contentious issue of how much attention and resources should be focused on domestic security efforts and how much on operations against terrorist networks abroad that directly threaten the U.S. homeland.

## OHS and NSC

Efforts to delineate OHS’s sphere of responsibility run some risk of oversimplification. The OHS, the CIPB, and the NSC have distinct responsibilities in the area of counterterrorism, but the functions and memberships of these organizations partly overlap and lines of authority are intertwined. For example, the President’s advisor for cybersecurity, Richard Clarke, reports to both NSC Advisor Condoleezza Rice and to Governor Ridge. The NSC’s National Director and Deputy National Security Advisor for Controlling Terrorism, who is the President’s principal advisor on combating global terrorism, also reports to both Ridge and Rice. OHS’s linkages with the NSC are especially complex. For instance, some OHS officials (such as the Senior Director for Intelligence and Detection) hold dual appointments in the OHS and the NSC. OHS and the NSC share responsibility for coordinating border security functions and for setting “priorities for the collection of intelligence outside the United States regarding threats of terrorism within the United States.” OHS and the NSC have issued joint classified reports on the “smart and secure” border system with Canada and on global transportation security.<sup>24</sup>

Nevertheless, OHS and NSC operate in distinct spheres. The executive order creating OHS specified that the Homeland Security Council would be responsible for administering policy for national security emergency preparedness “with respect to terrorist threats and attacks within the United States” and that it would be the “principal forum for consideration of policy” related to such threats and attacks. This amends Executive Order 12656 of November 18, 1988 which had assigned such responsibilities to the NSC “for any occurrence, including natural disasters, military attack, technological emergency that seriously threatens the national security of the United States.”<sup>25</sup>

A number of observers view OHS’s creation as reinforcing traditional barriers between foreign and domestic counterterrorism policy: “The nature of the terrorist threat gives rise to operational imperatives that are now at cross purposes with the organizational incentive [for OHS],” writes a 2002 RAND Corp. study.<sup>26</sup> Earlier studies had emphasized that foreign and domestic security planning against terrorism should be combined in a single integrated whole, because the international mobility

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<sup>23</sup> Stephen Flynn, “America the Vulnerable.” *Foreign Affairs*. January-February 2002, p.75.

<sup>24</sup> March OHS interview.

<sup>25</sup> The White House, “Assignment of Emergency Preparedness Responsibilities.” Executive Order 12656. November 18, 1988, secs. 101-104.

<sup>26</sup> “Organizing for Homeland Security.” Santa Monica, Calif: RAND Corp. Issue Paper IP-220-OEA 2002, p. 11.

and connectedness of terrorist organizations required such an approach. As the Gilmore Commission noted in 2000:

The national strategy should be geographically and functionally comprehensive. It should address both international and domestic terrorism. The distinction between terrorism outside the borders of the United States and domestic terrorist threats is eroding. International terrorism crosses borders easily and may directly affect the American homeland. ... To be functionally comprehensive, the national strategy should address the full spectrum of the nation's threats against terrorism: intelligence, deterrence, prevention, preemption, crisis management, and consequence management.<sup>27</sup>

What emerged in the wake of the September 11 attacks, however, was a bifurcated approach to overall coordination. OHS would coordinate responses to domestic terrorist threats, and the NSC would do the same for global terrorism. Some experts viewed this dichotomy as unfortunate. "Intelligence, law enforcement, and military operations at home and abroad need more integration, not less," said the aforementioned RAND study. A U.S. Coast Guard expert, an advocate of "point of origin" border controls, argues that "reducing the risk and consequences of attacks directed against the United States cannot be accomplished simply by tweaking the role and capabilities whose writ reaches only to the nation's shores."<sup>28</sup>

## The Example of Drug Control Strategy

An analogy can be drawn between international terrorism and the international drug trade, which also crosses borders. The ONDCP's National Drug Control Strategy comprises both foreign and domestic elements, ranging from eradication of coca bushes in Colombia to prosecuting street dealers in the United States. While the strategy has not succeeded in the sense of reducing availability and consumption of drugs in the U.S. market, a strategic planning process that views the drug trade as a borderless phenomenon seems applicable to the war on terrorism as well.

## Border Security

Similarly, the seamless quality of the terrorist threat is forcing U.S. government agencies to redefine their concepts of border security. The U.S. Customs Chief, Robert Bonner, for example, advocates "pushing the border outward" to allow U.S. inspections of travelers and goods in overseas ports, which in turn could give officials more time to detect and react to possible terrorist attacks. (Bonner emphasizes that "international terrorists such as al Qaeda could smuggle some sort of nuclear device in one of the more than 50,000 containers that arrive in the United States each day.")<sup>29</sup> Under Governor Ridge's "smart and secure" border plan with

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<sup>27</sup> "Toward a National Strategy for Combating Terrorism," p. 4.

<sup>28</sup> "America the Vulnerable," *op. cit.* p. 75.

<sup>29</sup> Robert Bonner, "Pushing the Border Outward." *U.S. Customs Today*. January 2002, p. 1; Robert Bonner, "Pushing Borders Outward: Rethinking Customs Border Enforcement." Speech at the Center for Strategic and International Studies. Federal News Service. January 17, 2002.

Canada, U.S. Customs officers will be stationed in Halifax, Montreal, and Vancouver (and Canadian officials on the U.S. side of the border). Bilateral discussions with Mexico may result in similar arrangements with that country. Additionally, Customs's concept of an expanded U.S. frontier against terrorism extends to far-away places such as Hong Kong, Rotterdam, and Singapore.

## How Broad a Mandate?

These various observations have implications for how broadly OHS's role and mission should be defined. Should a National Strategy establish performance measures, say, for global pursuit of al Qaeda cells or nonproliferation programs in Russia as well as for critical infrastructure protection and training of first responders at home? Should a single organization be responsible for coordinating and integrating all these activities? Or would such a mandate be impossibly broad, or at least exceedingly difficult to fulfill? And do OHS's multiple ties to the NSC (augmented by liaison relations to parts of the foreign affairs bureaucracy, as well as by the HSC committee mechanism) ensure an adequate degree of connectedness to the international terrorism scene?

The questions have significant policy implications. Much of the federal effort to combat terrorism, as the General Accounting Office has noted, has "been based on vulnerabilities, rather than on analysis of credible threats."<sup>30</sup> Separating homeland security and national security functions seems likely to reinforce this tendency. Indeed, the preface to the Administration's FY2003 budget document "Securing the Homeland, Strengthening the Nation" states that "the need for homeland security ... is not tied to any specific terrorist threat. Instead, the need for homeland security is tied to the underlying vulnerability and the fact that we can never be sure when or where the next terrorist conspiracy against us will emerge."<sup>31</sup>

The converse argument is that American society's vulnerabilities are essentially infinite and that threat assessment is needed to guide strategy and justify resource investments. Otherwise, says GAO, federal agencies will use improbable "worst-case scenarios" to plan and develop programs. Such assessments of necessity would derive from thorough analysis of the terrorist actors themselves, including their intentions and capability to launch attacks. This argument would support a more expansive definition of OHS's mandate, perhaps to include a role in coordinating and evaluating intelligence activities related to foreign-origin terrorist threats.

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<sup>30</sup> GAO, *Combating Terrorism: Linking Threats to Strategies and Resources*. GAO/T-NSIAD-00-218. July 26, 2000, p. 2.

<sup>31</sup> President George W. Bush, "Securing the Homeland, Strengthening the Nation," pp. 2-3.

## Strengths and Weaknesses of the OHS Concept

### Plans and Mechanisms

Creation of OHS raised the questions of possible redundancy or duplication with other interagency coordinating mechanisms and plans that predate the September 11 events or that were put in place after the attacks. A substantial collaboration effort, for example, was the Attorney General's Five Year Counterterrorism and Technology Crime Plan, published in 1998 with annual updates. The plan identifies several high-level goals aimed at preventing and deterring terrorism, including improving domestic event and consequence planning and management, facilitating international cooperation, strengthening state and local capabilities, safeguarding information infrastructure, and leading R&D efforts to advance counterterrorism capabilities. According to a September 2001 GAO report, the plan could serve with some modifications as the nucleus of a national strategy against terrorism.<sup>32</sup> Another preexisting plan, the Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN), "outlines an organized and unified capability for a timely, coordinated response by federal agencies to a terrorist threat or act," especially one involving Weapons of Mass Destruction.<sup>33</sup> CONPLAN, issued in January 2001 and signed by seven agency heads, was intended to be seen as a link between the investigative-enforcement functions of crisis management and the damage control ones of consequence management.

### Internal Security

Furthermore, analysts have noted an apparent overlap exists between OHS domestic preparedness and consequence management functions and those of the Federal Emergency Management Agency (FEMA), notably FEMA's Office of National Preparedness (ONP), created in a "Statement by the President" of May 8, 2001. According to the Statement, ONP was to coordinate all federal programs for WMD consequence management and also to "work closely with state and local governments to ensure their planning, training and equipment needs are addressed." Recent congressional testimony by ONP's Director Bruce Baughman states that "the President's decision to create ONP was a vital solution for a problem long recognized but not previously solved—the need for coordination among the myriad of federal programs dealing with terrorism preparedness." At the same time, the executive order setting up OHS states that the Office "shall coordinate national efforts to prepare for and mitigate the consequences of terrorist threats and attacks," and "to

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<sup>32</sup> GAO, *Combating Terrorism: Selected Challenges and Related Recommendations*. GAO-01-822. Washington, D.C. September 2001, pp. 48, 52, 134.

<sup>33</sup> Keith Bea, *Coordinating Government Resources for Recovery*, CRS Terrorism Briefing Book March 18, 2002, .pp.1-2. United States Government Interagency Domestic Terrorism Concept of Operations Plan January 2001, p.1 [<http://www.fbi.gov/publications/conplan/conplan.pdf>] The signatory agencies or departments were Defense, Energy, Health and Human Services, Justice, The FBI, FEMA, and the Environmental Protection Agency.



respond to and promote recovery from such incidents”<sup>34</sup> Some duplication of authorities between OHS and ONP thus appears to exist, although OHS as the architect of a broad national strategy for homeland security can be viewed as a consumer of information supplied by ONP rather than as a competitor.<sup>35</sup>

## Information Coordination

Similarly, OHS, in the words of its Director, aims to “tear down the information stovepipes that stand in the way of information sharing within the federal government.”<sup>36</sup> Yet data sharing in such areas as border security and foreign-origin terrorist threats is fairly well advanced. A case in point is the Interagency Border Inspection System (IBIS), a database used by both U.S. Customs and the Immigration and Naturalization Service (INS), which also interfaces with the State Department’s Consular and Support System (CLASS).<sup>37</sup> Sharing of intelligence of terrorist threats beyond U.S. borders occurs via the Counterterrorism Community Threat Warning System based in the CIA’s Counterterrorism Center (CTC). The latter distributes warnings, assessments, and advisories on a regular basis through a classified channel to intelligence components of more than 45 federal agencies. The CIA and the FBI, often viewed as organizational rivals, interact closely on terrorism intelligence matters, although recent revelations regarding advance indications of the September 11 attacks dramatize the need for improvement.<sup>38</sup> For example, a CIA official heads the CTC but the deputy head is from the FBI. Within the FBI’s in-house Strategic Information Operations Center (SIOC), where terrorist threats are analyzed and responses coordinated, the SIOC’s FBI head has a CIA deputy.

Also, important improvements have occurred since September 11 independently of the activities of Ridge’s office. The USA PATRIOT Act of October 26, 2001 (P.L. 107-56), mandated increased sharing of information between law enforcement and intelligence communities. For example, intelligence obtained in a criminal investigation or grand jury testimonies now can be shared with the CIA. Also, the Act stipulated that the FBI’s national Crime Information Center begin supplying criminal history records on visa applicants to the State Department’s CLASS system

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<sup>34</sup> Statement by Bruce Baughman before the Armed Services Military Procurement Subcommittee, U.S. House of Representatives. March 5, 2002, p. 2; “Establishing the OHS,” p. 3. The White House, Statement of the President. “On Domestic Preparedness against Weapons of Mass Destruction” May 8, 2001.

<sup>35</sup> CRS Report RL31285, *FEMA’s Mission: Policy Directive for the Federal Emergency Management Agency*, by Keith Bea.

<sup>36</sup> “National Press Club Luncheon Remarks by Tom Ridge, Director of the Office of Homeland Security.” Federal News Service. February 7, 2002, p. 6.

<sup>37</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). R.R. 107-56 (115 Stat. 275), secs. 203, 403.

<sup>38</sup> See for example David Johnston and James Risen: “Series of Warnings: Foreboding Increased but No Single Agency Had All the Clues.” *The New York Times* May 17, 2002 pp. A1 and A20

and to the INS to advance federal counterterrorism cooperation.<sup>39</sup> And in an independent initiative, the CIA has contributed the names of 26,000 suspected terrorists in its files to the FBI and the INS.<sup>40</sup> Also, a Bush Administration Presidential Directive (HSPD-2) of October 29, 2001, created an important new interagency coordination mechanism: the Foreign Terrorist Tracking Task Force, designed to ensure that federal agencies “coordinate programs” to keep aliens that engage in or support terrorist activity out of the United States or to deport such aliens that already are in the country.<sup>41</sup> The new task force would be staffed by expert personnel from State, the INS, the FBI, Customs, and other agencies. Its Director would report to the Deputy Attorney General. Significantly, the OHS would not control the new task force, although the latter’s Director would serve as agency advisor to the OHS.

## OHS’s Policy Proposals and Reactions

Other commentary alternately depicts the OHS’s policy proposals to date as either lacking in novelty or overly ambitious. Federal agencies, for example, take credit for the “smart and secure” border plan with Canada, which is designed to facilitate cross-border communication while improving screening for passengers and goods in transit. “Well before the Ridge-Manley accord, we had started meeting with our Canadian counterpart to significantly improve security against the terrorist threat,” said Robert Bonner, Commissioner of Customs. Similarly, INS head James Ziglar claimed that “everything in the Ridge-Manley document was already on the table and close to having something done about it.”<sup>42</sup>

Similar comments have come in response to one of Governor Ridge’s other priorities — the creation of the Homeland Security Advisory System. Yet the System, unveiled with great fanfare in mid-March 2002 after “months of planning,” was modeled closely on and functionally similar to one already in use in the Defense Department and the intelligence community.<sup>43</sup> Meanwhile the FBI continues to issue its own specific threat warnings, albeit with concurrence of other government agencies and the OHS. A recent example was a statement of April 19, 2002 that “unspecified terrorists are considering physical attacks against U.S. financial

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<sup>39</sup> See for example CRS Report RL31019, *Terrorism: Automated Lookout Systems and Border Security Options and Issues*, by William Krouse.

<sup>40</sup> Author interview, intelligence community source. Washington, D.C. area. March 8, 2002.

<sup>41</sup> The White House, “Combating Terrorism Through Immigration Policies.” HSPD-2. October 29, 2001, cited in Zeichner, *Critical Infrastructure Assurance*, pp. 26-30.

<sup>42</sup> Joel Brinkley and Philip Shenon, “A Nation Challenged: Domestic Defense.” *The New York Times*. Feb. 7, 2002, p. 16.

<sup>43</sup> Bill Miller, “National Alert System Defines Five Shades of Terrorist Threat.” *The New York Times*. March 13, 2002, p. A15; Report of the Interagency Commission on Crime and Security in U.S. Seaports. Washington, D.C. Fall 2000, p. 152. The Homeland Security Advisory System uses colors, green, blue, yellow, orange and red, to denote ascending threat levels; DOD uses five categories—normal, Alpha, Bravo, Charlie and Delta.

institutions in the Northeast, particularly banks, as part of their campaign against U.S. financial interests.”<sup>44</sup>

A “border security white paper,” prepared by Ridge’s office in December 2001, generated considerable controversy. The paper reportedly proposed consolidating the Coast Guard, Customs, the INS’s border enforcement function, and the Agriculture Department’s quarantine inspection program into an independent federal border administration. The plan was said to have been developed behind closed doors by the OHS staff rather than being circulated through the HSC’s policy coordination process. Strong opposition reportedly came from a range of agencies, among them the Departments of State, Treasury, Agriculture, Justice, and Defense.<sup>45</sup> In April 2002, in what was described as a “significant retreat” for Governor Ridge, the President’s domestic defense advisors recommended a far more modest merger—to combine Customs and units of INS into a new border control entity under the aegis of the Justice Department.<sup>46</sup>

## In Search of a Unique Mission

The preceding examples illustrate the challenges faced by OHS and Governor Ridge in carving out a unique mission for the Office. Whether OHS will become a “coordinator of coordinators”, a purely consultative body, or something entirely different, remains to be seen.<sup>47</sup> Yet many analysts believe that OHS’s organizational distinctiveness and potential value-added can best be conceived in broadly national, rather than exclusively federal government terms. Part of OHS’s charter, as defined in the executive order, is to “encourage and invite the participation of state and local governments and private entities as appropriate in carrying out the Office’s functions.”<sup>48</sup> In fact, a considerable portion of OHS’s staff activities consists of communicating with and building bridges to non-federal agencies. Governor Ridge emphasizes that creation of the FY2003 budget was a broad consultation process that involved state and local leaders and chiefs of police as well as heads of departments and agencies. The proposed \$3.5 billion federal allocation to state and local emergency first responders, a more than tenfold increase over the FY2002 base level, reportedly reflects this effort.

Also, Governor Ridge states that the forthcoming national strategy will “envelop every level of government, every enterprise” in organizing a defense against terrorist

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<sup>44</sup> The Associated Press. “FBI Warning of Possible Attacks against Banks in Northeast.” April 19, 2002.

<sup>45</sup> “Several Agencies to Create One That Protects Borders.” *The New York Times*. January 12, 2002, p. 18.

<sup>46</sup> David Sanger and Eric Schmitt, “Bush Leans Toward New Agency to Control Who and What Enters.” *The New York Times*. March 20, 2002.

<sup>47</sup> Ronald Moe, Office of Homeland Security. *CRS Terrorism Briefing Book*. November 1, 2001, p. 5.

<sup>48</sup> Executive Order 13228, op. cit.

attacks.<sup>49</sup> OHS maintains an ongoing dialogue with state and local agencies on a host of concerns regarding different attack scenarios. Critical issues in this dialogue are cost-sharing for new homeland security initiatives (who pays for what?), insurance and reinsurance in the event of mass casualty attacks, and dissemination of threat information.<sup>50</sup> In grappling with these novel and complex challenges, OHS may be able to project a stronger image of its organizational awareness and establish a more secure bureaucratic footing than it has had to date.

A particularly significant and contentious issue concerns information sharing between different levels of government. Horizontal intelligence sharing at the federal level is reasonably well-developed, and cross-agency linkages and databases reportedly have improved since the September 11 catastrophe. One fairly successful paradigm, referred to above, is the operations of the Community Counterterrorism Board with respect to foreign-origin terrorist threats. Furthermore, the FBI maintains its own national threat warning system (NTWS), which disseminates threat information to approximately 21 federal agencies. The NTWS also provides information in abbreviated and sanitized form to state and local law enforcement agencies nationwide through an unclassified channel — the National Law Enforcement Telecommunications System.<sup>51</sup>

Yet vertical sharing between federal and state and local agencies, by and large, is limited. State and local agencies make the point that to function as “partners” in homeland security, they will need a steady and accurate flow of intelligence about terrorist threats. Threat information assembled by government agencies often is classified for reasons of national security and few people in the state and local target audience possess the required security clearance to receive it. Threat information must be declassified and repackaged to protect the sources of the information and methods of collecting it. At the same time, sanitized threat warnings standing alone may lack sufficient detail, texture, and credibility to prompt action by state or local authorities, especially economically—or politically—disruptive steps like closing major bridges or power plants or evacuating parts of a city.<sup>52</sup> As Governor Frank Keating of Oklahoma stated in recent congressional testimony.

I faced a situation last fall that was almost laughable, if it hadn’t been for the seriousness of the times. My state adjutant general received a terrorist warning, but he couldn’t brief me, the man who appointed him, or my Commissioner of Public Safety, a retired FBI special agent in charge, because we lacked the proper

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<sup>49</sup> Tom Ridge, “National Press Club Luncheon Remarks.” Federal News Service. February 7, 2002, p. 3; “Securing the Homeland, Strengthening the Nation,” p. 30. Congress is contemplating legislation on the complex question of terrorism insurance. See S. Roy Woodall, Jr. *Terrorism Insurance—Comparison of H.R. 3210 and the Senate Compromise* CRS Report for Congress RS21211 May 1, 2002 pp.1-4.

<sup>50</sup> Henry Hinton, *Homeland Security Progress Made; More Direction and Partnerships Sought*. GAO. GAO-02-490T. Washington, D.C. March 12, 2002, p. 11.

<sup>51</sup> *Report on Crime and Security in U.S. Seaports*, pp. 150-154.

<sup>52</sup> *Ibid.*

security clearances. It does little good to tell state officials that something bad might happen and refuse to tell them what, where, or when.<sup>53</sup>

The problem of information sharing across agency and jurisdictional lines is partly technical in nature. It requires integrating different knowledge bases on various hardware and software platforms to create, in the words of one expert, a “consistent information technology architecture.” As the President’s 2003 budget proposal, “Securing the Homeland, Strengthening the Nation,” states, “Having the right system of communication — content, process, and infrastructure — is critical to bridging existing gaps between federal, state, and local governments as well as the private sector.” Ultimately, though, questions of information sharing — who gets what, how much, when, and under what circumstances — require complex political choices, especially when attempting to bridge the federal/non-federal divide.

Many observers appear to favor more empowerment and access, at least for state authorities, though proposals for doing this vary widely. For example, U.S. intelligence specialists interviewed for this report recommended setting up secure communications facilities in state capitals configured to receive top-secret threat assessments and warnings from intelligence community components. In this scenario, such centers would be staffed by retired CIA, Defense Intelligence Agency, or other government personnel with the requisite high-level security clearances. At the same time, the elected top officials of the states, including the Governors, Lieutenant Governors, and the states’ Attorneys General, would receive clearances ex-officio—that is, by virtue of their elevated political positions.<sup>54</sup> Other proposals would go further to democratize the flow of information. Bills introduced in the House and Senate (H.R. 3285 and S. 1615) would permit sharing of foreign intelligence information with senior law enforcement officials (“of a state or political subdivision of a state”) subject to whatever guidelines the Attorney General might use to protect confidentiality.<sup>55</sup>

The OHS tendency to date has been to view information sharing for homeland security less in terms of expanding the circle of potential customers (that is, “politically”) than in terms of modernizing technology and infrastructure. (The section of the President’s budget proposal on “Using 21<sup>st</sup> Century Technology to Defend the Homeland,” reflects this tendency.)<sup>56</sup> In that context, OHS’s principal achievement in meeting state and local demands for more access to threat information has been the aforementioned national alert system with its five color codes. That system, though — while described as a step in the right direction by some — provides only general guidance as to what communities are supposed to do as risks escalate. (The entire United States, for example, is currently designated as in yellow alert mode, indicating “increased surveillance of critical locations,” “coordinating emergency

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<sup>53</sup> Testimony of Governor Frank Keating (R.-Okla.) before the House Subcommittee on National Security, Veteran’s Affairs, and International Relations. March 12, 2002, p. 4.

<sup>54</sup> Author interview. U.S. intelligence specialists. March 8, 2002.

<sup>55</sup> 107<sup>th</sup> Congress, 1<sup>st</sup> Session: “Federal-Level Information Partnership Act of 2001” (S. 1615). November 1, 2001, pp. 1-2; “The Federal-Level Information-Sharing Partnership Act” (H.R. 3285). November 13, 2001, pp. 1-2.

<sup>56</sup> “Securing the Homeland,” pp. 19-25.

plans with nearby jurisdictions,” “assessing further refinements of protective measures,” and “implementing contingency and emergency response plans.”)<sup>57</sup> So far, the issue of providing specific, detailed, timely, and credible threat information remains a challenge. Nonetheless, Governor Ridge’s Office’s potential role as an information “broker” could be vast, especially in developing new protocols for disseminating federal level intelligence to the states and localities.

## **Alternative Models for Managing the War on Terrorism**

The role and effectiveness of OHS in developing and coordinating national policy for homeland security activities are still in their formative stages. There appears to be a growing consensus in Congress, shared by some federal agencies, that modifications are needed. Various alternatives, which are not mutually exclusive, have been proposed.

One alternative focuses on the basis of OHS’s authority: that it be established through legislation to ensure the Office’s legitimacy and sustainability, and that the head of the Office be subject to confirmation by the Senate. A second theme is that the scope of responsibility of the Office be expanded to encompass foreign as well as domestic terrorist threats; that would imply integrating national security and homeland security planning functions. A third proposal is to replace OHS with a homeland security “super-agency” to exercise direct operational authority over agencies performing domestic security functions and possibly with a coordinating role vis a vis counterterrorism activities beyond U.S. borders. A fourth alternative is to retain the OHS-HSC structure, mission, and relationship to the White House largely intact, though possibly with a few organizational refinements.

These organizational scenarios may be the subject of careful consideration and debate by Congress and within the Administration. What happens to OHS clearly has important implications, both for the definition of “homeland security” itself and for the parameters of the overall U.S. counterterrorism effort.

## **Statutory Issues**

Perhaps the most frequent point of contention is whether OHS authority should be based on statute or presidential directive. The argument is sometimes made that a statutory basis and Senate confirmation are necessary because of the high profile of the Office and because of Congress’s need to execute oversight over such a nationally-important function as homeland security. A related argument is that the presidential order establishing OHS “violates the spirit of comity between the branches.”<sup>58</sup> Others, however, maintain that the more relevant question is whether a statute and increased congressional supervision will enhance the performance effectiveness of the Office.

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<sup>57</sup> “National Alert System,” op. cit.

<sup>58</sup> Ronald Moe. Office of Homeland Security. *CRS Terrorism Briefing Book*. November 1, 2002, p. 4.

An example of the performance effectiveness view would be the above-mentioned case of ONDCP. Compared to ONDCP's limited statutory powers, Governor Ridge's informal budget influence is generally considered to be enormous, stemming from his special relationship with and proximity to the President and also from the strong antiterrorism consensus that developed in the wake of the September 11 attacks. On the other hand, some analysts argue that because of the President's wide-ranging foreign and domestic responsibilities such support will not always be forthcoming. As former White House Chief of Staff Leon Panetta noted in recent congressional testimony: "the agencies and departments know very well that unless the President is calling on every issue that the homeland security director is trying to enforce, they can basically nod, say yes and walk away and nothing happens."<sup>59</sup>

Much, of course, would depend on the statute itself and the nature of the powers and responsibilities that it confers. The statute for the drug czar's office provides ONDCP with some provisional authority to intervene in the budget process and delay finalization of agency budgets. In addition, ONDCP enjoys a single unambiguous power to approve agency reprogramming requests of more than \$5 million. Yet a key coordinating power assigned to ONDCP—interagency transfers of funds to fill perceived needs and gaps—requires approval of the heads of the respective agencies. And, in any case, it cannot exceed 3 percent of the drug control budget of the agency from which funds would be transferred.<sup>60</sup>

Also, certain provisions of the ONDCP's statute may tend to weaken rather than enhance the Office's credibility. For example, Section 706, "Development, Submission, Implementation, and Assessment of National Drug Control Strategy" establishes specific targets that might be viewed as unrealistic and unrealizable: They mandate "reduction of unlawful drug use to 3 percent of the population of the United States or less by December 31, 2003" (the current figure stands at approximately 11 percent) "and reduction of the availability of cocaine, heroin, and marijuana by 80 percent by December 31, 2003." (Estimated South American cocaine production reached an all-time high of nearly 1,000 tons in 2001.)<sup>61</sup>

Also, it is not clear whether increasing the accountability of the Office would improve its performance. Receiving the imprimatur (advice and consent) of the Senate carries with it the cost of increased reporting requirements, including demands for testimony by the OHS head. Whether reporting is a drag on performance or a salutary check on it can be debated. Others point out that the dynamic and rapidly-evolving nature of the international terrorist threat could require frequent changes in

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<sup>59</sup> Statement in eMedia.Mail Works, Inc., Federal Document Clearing House, Inc. "U.S. Senator Russell Feingold (R-WI) Holds Hearing on Homeland Defense." Transcript. April 17, 2002. p. 16.

<sup>60</sup> P.L. 105-277. Title VII. Sec. 704. "Appointment and Duties of Director and Deputy Directors." 112-Stat. 2681 677-685

<sup>61</sup> Ibid. Section 6, "Development, Submission, Implementation, and Assessment of National Drug Control Strategy." 681-682; telephone interview with Department of State, Bureau of International Narcotics and Law Enforcement Affairs March 16, 2002 and telephone interview with Peter Reuter University of Maryland, April 15, 2002

OHS's role and mandate, which would be more easily accomplished through successive executive orders than through changes in legislation.

A strong and possibly decisive argument for greater congressional involvement lies in the Office's need for institutional legitimacy and long-term financial support.<sup>62</sup> Congress' specific authority to mandate government agencies implies that OHS cannot function indefinitely without a legislative basis. For example, title 31 section 1347 of the United States Code states that "an agency in existence for more than one year may not use amounts otherwise available for obligation to pay its expenses without a specific authorization or a specific appropriation by law."<sup>63</sup> Furthermore, a consensus is growing on Capitol Hill that empowerment by Congress is essential to give Ridge's office (or some alternative organizational arrangement) the requisite power and tools to lead the domestic fight against terrorism.

## Changing the Mandate

At issue is an interagency planning and coordinating process, spearheaded by OHS, that largely excludes international aspects of the war on terrorism. One important question is how resources will be allocated between domestic and foreign counterterrorism activities. Most analysts are uncertain whether OHS's forthcoming National Strategy can resolve this issue. Another question is whether the separation of counterterrorism planning into distinct foreign and domestic halves might distort the budgetary process, leading to an overemphasis on America's (essentially infinite) vulnerabilities rather than threat assessments in making resource allocation decisions.

Arguments for vulnerability-driven threat assessments emphasize that threats from terrorists, especially from less-organized ad hoc groups, are essentially unpredictable. The Ramzi Yousef cabal that masterminded the 1993 World Trade Center bombing can be cited as an example. On the other hand, it is argued that more precise assessment of the nature, dimensions, and intensity of the terrorist threat is both possible and necessary. A GAO study points to the tendency of intelligence officials to exaggerate, if by default, the likelihood of terrorists' use of chemical, biological, radiological, or nuclear (CBRN) weapons or agents.

In our view, some of the public statements intelligence community officials have made about the terrorist CBRN threat do not include important qualifications to the information. For example, terrorists would have to overcome significant technical and operational challenges to successfully make and release chemical and biological agents of sufficient quality and quantity to kill or injure large numbers of people without substantial assistance from a foreign government sponsor.<sup>64</sup>

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<sup>62</sup> Moe, op. cit., p. 4; GAO, *Homeland Security: Responsibility and Accountability for Achieving National Goals*. Statement of David Walker. GAO-02-6275. April 11, 2002, p. 4.

<sup>63</sup> U.S. Code. 1994 Edition. Washington, D.C. U.S. Government Printing Office, 1995. p. 1246.

<sup>64</sup> GAO. *Combating Terrorism*, pp. 1-2.



The same can be said of nuclear weapons. Terrorists almost certainly lack the expertise to build one, even if they could acquire significant quantities of fissile nuclear materials. While reports abound of al Qaeda's efforts to obtain a nuclear weapon from unsecured Russian stockpiles, it is questionable whether that group could muster sufficient connections inside the Russian defense establishment to consummate such a deal.

The argument about OHS's appropriate role is partly an argument about the proper use of threat and risk assessments in combating terrorism. A case can be made, especially in the light of recently reported advance communication failures regarding the September 11 attacks, for a stronger role for OHS in international counterterrorism — especially, perhaps, in overseeing intelligence efforts to track and analyze terrorist threats. A series of questions then arises: Would an expanded role make for better intelligence-gathering and threat assessments? Would improved intelligence result in a national strategy to combat terrorism? Would an enhanced strategy, then, lead to more sober calculation of the resources actually needed to confront the terrorist menace?

There are no clear answers. OHS, of course, maintains linkages to the national security community. Yet some observers call for a more pronounced integration of the intelligence and foreign policy agencies into the homeland security effort.. Admittedly, to reconfigure OHS in this fashion would be a major organizational undertaking. Yet three of the major commission studies (by the Gilmore and Hart-Rudman Commissions and the National Commission on Terrorism) proposed it. The . Hart-Rudman Commission and the National Commission saw the coordinating role as being performed by the NSC. The Gilmore Commission proposed creating a new National Office for Combating Terrorism, the Director of which would be appointed by the President and confirmed by the Senate. The Gilmore approach was embodied in bills sponsored in the House and Senate.<sup>65</sup> Viewed in this light, a possible organizational solution — other than an OHS with ramped-up responsibilities — would be simply to fold OHS into the NSC. A corollary move might be to resuscitate the NSC's National Coordinator for Security, Infrastructure, and Counterterrorism. This position was established by Presidential Decision Directive 62 in 1998 — but it was rendered obsolete by the creation of the posts of OHS Director, Special Advisor for Cyber Security and National Director for Combating Terrorism. A refurbished National Coordinator, provided with sufficient staffing and resources, might serve as a focal point for an entire gamut of counterterrorism-related activities.

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<sup>65</sup> "Organizing for Homeland Security," p. 14; "Toward a National Strategy," p. 12. The proposed Office would "have sufficient budget authority and programmatic oversight to influence the resource allocation process and ensure program compatibility." The relevant legislation includes S. 1449 (Graham et al.) "To Establish the National Office for Combating Terrorism" and H.R. 3026 "The Office of Homeland Security Act of 2001." The latter called for setting up an Office of Homeland Security within the Executive Office of the President, not unlike its current namesake. Yet the proposed office would develop a national strategy "to include all aspects of prevention and response to terrorist activities."

## Mega-Agency

Proposals have been advanced to reorganize the federal government to create greater efficiencies or synergies in the fight against terrorism. These involve, in varying degrees, the creation of a unified command structure “to address the perennial problem of coordination” and have varying implications for the current OHS-HSC framework. For example, some schemes under consideration that would consolidate two or more border control agencies, or subunits of them, are more or less compatible with the continued existence of OHS and presumably would ease its coordination burden. OHS itself proposed such a reorganization in the abovementioned “Border Security White Paper” prepared in December 2001. It would create a new federal border administration to take control of the Coast Guard, Customs, and parts of INS and the Agriculture Department. However other Bush administration advisers favor a more modest merging of Customs and INS border control and enforcement units into a single agency under the control of the Justice Department.

More ambitious reorganization options, though, could supersede or embrace, at least by implication, the coordination role performed by OHS. Such plans would integrate a number of federal agencies performing domestic security functions. For example, bills introduced by Senators Joseph Lieberman and Arlen Specter in October 2001 (S. 1534), a month after the attacks on the World Trade Center and the Pentagon, would create a new “Department of Homeland Security” with a Secretary appointed by the President “by and with the consent of the Senate.” The Department’s responsibilities would cover border security and emergency preparedness and would range beyond counterterrorism “to act as a focal point regarding natural and manmade crises.” The new Department would assume control over the “authorities, functions, personnel, and assets” of several entities: FEMA, the Customs Service, the Border Patrol, the Coast Guard, and different offices of the FBI and the Department of Commerce. Virtually identical legislation proposed a month earlier by Representative Mac Thornberry would establish a “National Homeland Security Agency” (H.R. 1158).<sup>66</sup> Similarly, the Hart-Rudman Commission in January 2001 had recommended, in addition to coordinating foreign and domestic counterterrorism operations, setting up a National Homeland Security Agency with FEMA as “the necessary core” and including the Customs Service, the Border Patrol, and the Coast Guard.<sup>67</sup>

Even more expansive reorganizations have been contemplated. One such concept would establish a new core agency, a Homeland Security Agency (HSA), along the lines of that proposed by H.R. 1158 and Hart-Rudman; the HSA, however, would also coordinate the activities and budgets of other agencies with counterterrorism responsibilities, including the Departments of State, Justice, Treasury, and the CIA. The institutional model for this mega-configuration would be the Director of Central Intelligence, who not only runs the CIA but also “provides guidance” to other

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<sup>66</sup> 107<sup>th</sup> Congress, 1<sup>st</sup> Session. “National Homeland Security Agency Act.” (H.R. 1158) March 21, 2001, pp. 1-6; “Department of National Homeland Security.” (S. 1534) October 11, 2001, pp. 1-6.

<sup>67</sup> United States Commission on National Security, 21<sup>st</sup> Century, *Road Map for National Security: Imperative for Change*. Phase III Report. Washington, D.C. January 31, 2001, p. 15.

elements of the intelligence community in preparation of their budgets and additionally retains at least a theoretical power to “approve such budgets before their incorporation in the National Foreign Intelligence Program.”<sup>68</sup> Most recently, bills introduced by Senators Lieberman, Specter and Graham in the Senate (S. 2452) and by Representatives Thornberry, Harman, Tauscher, Gibbons, Davis, Shays, and Roemer in the House (H.R. 4660) envisage creating both a federal Department of National Homeland Security and a National Office for Combating Terrorism. The former would contain directorates (for example, for critical infrastructure protection and prevention) similar to those of the current OHS. The Secretary and Director of these respective organizations would be co-responsible for drafting a National Strategy for Combating Terrorism and Homeland Security Response. The National Office would have broad responsibilities in the international sphere, including coordinating the implementation of the Strategy by “military, intelligence, law enforcement and diplomatic assets “and making budget recommendations for these agencies. Additionally, that Office would have the authority to review and decertify these agencies’ budgets, using procedures similar to those established in ONDCP’s statute.

All such proposals for organization reform have sparked controversy. There is little unanimity on the desirable scope or appropriate extent of reorganization. Advocates of radical change see the need for a single center of gravity for homeland security activities. Critics tend to see the process of consolidating agencies as costly, time-consuming, and potentially disruptive. In certain cases, such as the Customs Service (part of the Treasury Department) and the FBI’s National Infrastructure Protection Center (NIPC), the pieces are not entirely distinct and separate from the core missions of the parent organizations. Questions arise about the non-enforcement functions of certain agencies; for example, what happens to Customs’ collection of import tariffs and the Coast Guard’s search and rescue operations? Additionally, consolidation proposals still fail to encompass organizations that play a crucial role in homeland security, such as the Centers for Disease Control, which are responsible for detecting and responding to biological attacks, the FBI, which is responsible for crisis management, and DOD, which conceivably could become the lead federal agency “in cases, such as a terrorist attack, where normal measures are insufficient to carry out federal functions.”<sup>69</sup> Finally, the scope of the new National Office appears to coincide partly with that of the NSC, creating the possibility of conflict between these entities. Congress will need more specific information about what problems will be solved and created by proposed agency mergers and other organizational changes.

Almost certainly, bureaucratic reorganization, especially involving the mega-solutions described here, is unlikely in the immediate future. This suggests to some a continuing need for a coordinator or conflict-resolution mechanism such as the OHS and the HSC. Success in coordinating federal antiterrorism efforts turns on the ability to foster better sharing of information and resources among federal authorities and

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<sup>68</sup> “Authorities of the Director of Central Intelligence.” 50 USCA no. 403-404 (P.L. 102-496). October 24, 1992, p. 16; M. Thomas Davis, *Homeland Security: New Mission of a New Century*. Analysis Center Paper. Northrup Grumman. Washington, D.C. 2002, p. 14.

<sup>69</sup> Rumsfeld’s testimony, op. cit.

their state and local counterparts, and at the minimum, OHS and HSC have served as a vital stimulus to that purpose.

## Status Quo

Finally, arguments can be made for retaining the present OHS-HSC structure and for allowing it to concentrate on its domestic counterterrorism responsibilities. Even in this limited sphere, the organization might be able to exercise a coordination function, “especially if the President is prepared to intervene personally,” as one commentator observes.<sup>70</sup> A key issue is the definition of coordination. An OHS staffer interviewed sees this process as essentially non-confrontational, “building a consensus among agencies to follow a particular course of action.”<sup>71</sup> This could work if the President is willing to underwrite the OHS Director’s core positions in the face of opposition from agencies jealously guarding their turf and prerogatives. Yet this could cause great difficulties to the extent that it pitted the White House against agencies belonging to the President’s cabinet. Alternatively, administrative measures may be taken to strengthen OHS’s now weak formal role in the budgetary process. A recommendation by the above-mentioned Brookings study would be to appoint a single person to serve both as Ridge’s budget chief and as a new associate director of OMB for homeland security. Under such a dual-hatting arrangement, argues the study, OHS would have “not only the overarching budgetary view that only a coordinating office like OHS can have, but by being an integral part of the OMB process it can exert major if not decisive influence on the final outcome.”<sup>72</sup> A disadvantage of such a step, though, is that it could increase the existing separation between domestic and foreign policy aspects of counterterrorism budgeting and decision-making.

Pressure is increasing for formalizing the Office’s powers and for making the OHS Director accountable to Congress; yet the question arises as to whether greater institutional legitimacy in those terms would facilitate OHS’s coordination task or, conversely, decrease its flexibility to respond to new situations. The Brookings Institution study, which favors a statute, cautions that such legislation “should give maximum operating flexibility to the president to design its organization and mission.”<sup>73</sup>

## Summary and Conclusion

In response to the September 11, 2001 terrorist attacks, President Bush created the Office of Homeland Security by executive order as a federal focal point for planning and coordinating domestic efforts against terrorism. OHS’s mandate was to bring direction and coherence to homeland security at the federal level and also to integrate the full range of such activities across federal, state and local jurisdictions.

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<sup>70</sup> “Organizing for Homeland Security,” p. 13.

<sup>71</sup> March 5 OHS interview.

<sup>72</sup> *Protecting the American Homeland*, p. 114.

<sup>73</sup> *Ibid.*, p. 116.

Establishment of OHS was initially welcomed as an important step toward improving America's domestic response to terrorism. Nevertheless, a consensus is growing in Congress and in some federal agencies that OHS's basis and scope of authority need modification. In the eyes of some, the entire homeland security effort should be structured along different lines. Critics argue that the Office lacks the power to effectively coordinate the information and resources necessary to protect the country against domestic terrorist threats. OHS Director Tom Ridge, despite his special access to the President, is increasingly depicted as the loser in various turf disputes with the Justice Department, the Pentagon and other government agencies. Still other observers question the overall need for and relevance of Ridge's office, arguing that it adds little value to interagency coordination mechanisms that predated the September 11 attacks or that were put in place after the attacks.

The essentially domestic focus of OHS's responsibilities also has drawn criticism. In this view, the international mobility and connectedness of terrorist organizations, dramatized by the events of September 11, has effectively blurred distinctions between domestic and foreign anti-terrorism policy. OHS's mandate, as presently defined, tends to separate these spheres, and this is seen as complicating national planning and resource allocation for the overall counterterrorism effort.

Various remedies have been proposed to address these perceived problems. One frequently-mentioned alternative is to enhance the OHS's basis of authority with statutory underpinnings and effective congressional oversight. Such a step, it is argued, would provide OHS with the institutional legitimacy necessary to ensure effective performance of its coordination functions. Another theme is that coordination mechanisms per se are not enough and that a homeland security director should exercise administrative line authority over policies and funding of agencies involved in protecting the American homeland. A third recommendation is that OHS play a stronger role in international counterterrorism, especially in coordinating intelligence efforts to track and analyze foreign terrorist threats. Such a change would imply integrating national security and homeland security planning functions, and possibly absorbing OHS into the current NSC structure.

Proposals for reorganizing the U.S. counterterrorism effort are becoming progressively more elaborate. Legislation recently introduced in the Senate and the House of Representatives addresses a broad range of concerns. The bills would consolidate entities responsible for border security and consequence management into a single cabinet department. They would also create a new coordination mechanism that, unlike OHS, would be largely concerned with the international aspects of counterterrorism policy. The heads of the newly created entities would be co responsible for creating a single integrated strategy and budget for fighting domestic and global terrorism. Yet the fate of such proposals is uncertain. Critics view the process of amalgamating agencies as costly, time-consuming, and potentially disruptive. Turf-conscious bureaucratic actors seem likely to fight reorganization. Creation of a unified national strategy to address all aspects of terrorism, while perhaps inherently desirable, could to be a complex and difficult undertaking.

Nonetheless, the concept of OHS Director as an intelligence "broker," working to provide non-federal agencies with a better window on the world of international terrorism (and to increase the upward flow of relevant information from the local to

the federal level), may have intrinsic appeal, even to the Office's critics. Some organizational changes at the margins, such as adding professional intelligence officers to OHS's Directorate of Intelligence and Detection, a step now being contemplated, might strengthen the Office's capability to perform this broker function. In any case, the crux of OHS's "value-added" as a coordinator may lie less in its federal oversight role than in its success in addressing the relatively novel challenge of empowering the states and localities in the fight against terrorism.